

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

REC'D 11 MAY 2004

WIPO PCT

Applicant's or agent's file reference 2002/M209	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/03676	International filing date (day/month/year) 09.04.2003	Priority date (day/month/year) 24.04.2002
International Patent Classification (IPC) or both national classification and IPC A01N25/00		
Applicant BAYER CROPSCIENCE S.A. et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.
 

☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 2 sheets.

3. This report contains indications relating to the following items:
 

I ☒ Basis of the opinion

II ☐ Priority

III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability


IV ☐ Lack of unity of invention

V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

VI ☐ Certain documents cited

VII ☐ Certain defects in the international application

VIII ☐ Certain observations on the international application

Date of submission of the demand  25.10.2003	Date of completion of this report  06.05.2004
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Romano-Götsch, R Telephone No. +49 89 2399-8874



**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/EP 03/03676**

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-29 as originally filed

**Claims, Numbers**

1-9 filed with telefax on 13.04.2004

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

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International application No. **PCT/EP 03/03676**

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	1-9
	No: Claims	
Inventive step (IS)	Yes: Claims	1-9
	No: Claims	
Industrial applicability (IA)	Yes: Claims	
	No: Claims	1-4 (yes), 6-9 (no opinion)

**2. Citations and explanations**

**see separate sheet**

**Re Item V**

**Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

The following documents cited in the ISR are referred to:

D1: DE-A-19749683 (also cited in the application)

D2: LLOYD AND DREW : 'Modification and Testing of Brewery Waste Yeast as a protein source for fruit fly bait' MANAGEMENT OF FRUIT FLIES IN THE PACIFIC - ACIAR PROCEEDINGS, vol. 76, 1997, pages 192-198, XP001153059

Document D1 discloses a composition for luring and controlling arthropods comprising specific silicic acid and silicates (see p.2, lines 63-70) in combination with an attractant. The examples in D1 (Tabelle 1 p.4) describe baits comprising silicic acid "Aerosil 200 Hydrophil" in combination with protein, yeast and cereals. D1 does not disclose protein autolysate.

Document D2 discloses spray protein baits comprising protein autolysate derived from Saccharomices.

None of the prior art document discloses protein baits comprising one or more active compounds active against animal pests and silicilic acids and protein autolysate. Thus, the subject-matter of claims 1-9 is regarded as novel over D1-D2 (Art.33(2) PCT).

D2 is considered as the closest prior art.

The problem to be solved by the application is regarded as to provide a more effective protein bait over D2.

The solution proposed in the application consists in modifying the bait disclosed in D2 by adding the specific silicilic acid /silicate of D1 **and one or more active compounds active against animal pests** to the protein autolysate described in D2.

The protein baits are known in the art, and work on the principle that immature insect females need a protein meal for developing mature eggs. Thus, the bait spray technique relies on its attractant properties.

D2 teaches the advantages of baits based on protein autolysates instead of protein hydrolysate, which cause burning of foliage and are thus phytotoxic.

D1 teaches the advantages of using silicilic acid and silicates over classical pesticides, and describes them as less toxic, environmental friendly (p.2, lines 1-10 and lines 27-42). D1 describes using them in combination with pest-attractants (see p.2, lines 63-70).

According to D1, silicilic acid /silicates provide effective pesticidal activity while being nontoxic, easy to handle and environmentally friendly, thus offering a valid alternative to classical insecticides (p.2, lines 1-10 and lines 27-42).

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EXAMINATION REPORT - SEPARATE SHEET**

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International application No. PCT/EP03/03676

It follows that the composition of claims 1-5 and its use as claimed in claims 6-9 is not suggested in D2 alone or in combination with D1 (Art.33(3)PCT).

On pp.19 (last paragraph)-20 (first paragraph), the use of the claimed composition in the field of veterinary medicine is described.

**It follows that claims 6-9 in view of pp.19-20** are regarded as directed to therapeutic application, i.e. a method of treatment of the animal body.

For the assessment of the presently worded claims 6-9 on the question whether they are industrially applicable, no unified criteria exist in the PCT. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not regard as industrially applicable claims to the use of a compound in medical treatment, however will allow claims to a known compound for first use in medical treatment and the use of such compound for the manufacture of a medicament for a new medical treatment.

For the sake of completeness, the Applicant attention is directed to the following objections:

- The expression 'incorporated herein by reference' on pp. 20 should be deleted since the document it refers to is already claimed as priority document of the present application.
- To meet the requirements of Rule 5(1)(a)ii. PCT, the document D2 should be identified in the description and the relevant background art disclosed therein should be briefly discussed.